

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JAMES GENCARELLI,

Plaintiff,

vs.

**1:20-CV-85
(TJM/CFH)**

**THE COCA-COLA COMPANY, and
LIBERTY COCA-COLA BEVERAGES,**

Defendants.

**Thomas J. McAvoy,
Sr. U.S. District Judge**

DECISION & ORDER

The Court referred this *pro se* civil action to Magistrate Judge Christian F. Hummel for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). Plaintiff proceeding *pro se* and *in forma pauperis*, alleges that Defendants, the Coca-Cola Company and a company contracted to bottle Coca-Cola beverages, damaged him by selling him an aluminum can contaminated by sulfuric acid. Plaintiff alleges that he injured his lips, throat, and mouth by drinking the product. His complaint alleges various types of products liability claims against the Defendants.

Magistrate Judge Hummel gave the Plaintiff's Amended Complaint an initial screening. His Report-Recommendation, dkt. # 7, issued on April 13, 2020, grants Plaintiff's motion to proceed *in forma pauperis* and recommends that the Court dismiss without prejudice Plaintiff's claims for vicarious liability and negligence per se. Magistrate

Judge Hummel recommends that the Court and accept the rest of the Complaint for filing.

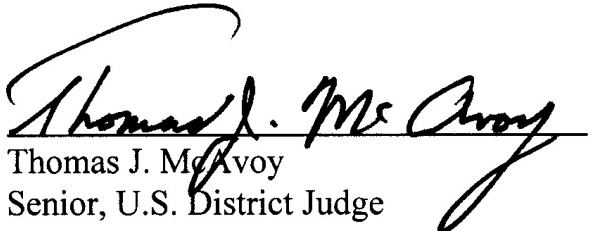
No party objected to the Report-Recommendation, and the time for such objections has passed. Plaintiff responded to the Report-Recommendation by filing an Amended Complaint. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice and the Court will accept and adopt the Report-Recommendation for the reasons stated therein. The Court will refer the Plaintiff's recently filed Second Amended Complaint to Magistrate Judge Hummel for appropriate action.

Accordingly,

The Report-Recommendation of Magistrate Judge Hummel, dkt. # 7, is hereby **ACCEPTED** and **ADOPTED**. Plaintiff's claims for vicarious liability and negligence per se are dismissed without prejudice to re-filing. Plaintiff's Second Amended Complaint, dkt. # 8, is hereby **REFERRED** to Magistrate Judge Hummel for appropriate action.

IT IS SO ORDERED.

Dated: May 20, 2020


Thomas J. McAvoy
Senior, U.S. District Judge